

Local Official Duties and Opportunities in the Post-Disaster Setting

Background. After enduring a (delightfully) long Summer and Fall, things are back to normal again in the Northwest. That means it's raining and snowing and that, in turn, reminds us that we have once again entered into flood season.

As the State Coordinating Agency for the National Flood Insurance Program (NFIP) as well as the agency responsible for administering the State Floodplain Management law, and on behalf of FEMA, we would like to take this opportunity to remind local officials in Washington of their responsibilities in administering local floodplain ordinances after disasters strike. The post-disaster setting can be, and usually is, a most chaotic time; but it can also be the time when opportunities appear that are not available during normal times.

There are now 286 counties, cities, towns and tribes in the State that participate in the National Flood Insurance Program. All of these jurisdictions have a floodplain management ordinance that must meet Federal and State regulations in order to establish eligibility in the NFIP, and all of these jurisdictions must enforce the regulations in order to assure their continued participation. Failure to adopt or enforce can lead to suspension from the program which, in turn, would remove flood insurance availability for all residents within a particular jurisdiction. That would lead to an inability to sell structures in floodplains, since lenders must require flood insurance.

Substantial Improvement/Substantial Damage. One of the most difficult measures local officials have grappled with through the years is what to do when major improvements are made to structures and, more to the point regarding this flood season, when structures receive major damage. The NFIP requirements governing the improvement of pre-existing flood-prone structures were designed to progressively bring these structures into compliance with NFIP elevation requirements for new construction, as they were significantly damaged and/or improved. The intent was not to prohibit owners of property in the floodplain from making significant improvements to a structure, but to require that when extensive improvements were made, steps be taken to ensure that the structure is protected from future flood damage.

This is similar to nonconforming use standards used by many communities, wherein the use is allowed to remain nonconforming until it is substantially altered, at which point it must become a conforming use. The 50 percent threshold was chosen as a compromise between the extremes of prohibiting all investment to existing structures in floodplains, and allowing existing structures to be improved in any fashion. The threshold conforms to similar building code and zoning standards that also use a 50 percent threshold, and was selected on the basis that it does not make sense to pay flood losses on the same property over and over again. It attempts to strike a balance between the competing demands for sound floodplain management and the needs of owners of existing structures.

What does this Mean in Disasters? Whenever a structure is damaged over 50 percent of its pre-disaster market value, it falls under the definition of substantial improvement and, as such, must be elevated to the Base Flood Elevation (BFE) per the local ordinance. In Washington State, this takes a different twist if the structure is located within the floodway portion of the floodplain. Here, new residences and substantial improvements of existing structures are not

allowed, per RCW 86.16, with the exception of farmhouses and certain other residences that are below a depth, velocity and erosion threshold. The elevation requirement applies to damages from any origin, whether that be fire, earthquake, landslide, wind or others. However, because we are in flood season, this article will concentrate on flood damages.

Things are very hectic during and after disasters; they are not the best times to make difficult requirements particularly when the normal reaction of victims is to get back into their houses or businesses as quickly as they can. However, it is imperative that local officials uphold this legal requirement: [1] in view of the need to enforce their regulations as a condition of continued participation in the NFIP; [2] in view of the need to assure that future investment over the 50 percent threshold in floodplains is safe from flooding and; [3] most importantly, in view of the significant opportunities local government action provides to the flood victim.

Local Enforcement Actions that Benefit Flood Victims. A major difficulty with enforcement of the substantial damage rule in the past was that there was no sure source of funding to pay for elevation to the BFE. Thus, the victim, in addition to having to pay for damages to the structure also had to pay, often out of pocket, to elevate it to the BFE. However, FEMA recently added a provision to its Standard Flood Insurance Policy that is called Increased Cost of Compliance (ICC) insurance, which provides coverage of up to \$20,000 to a policyholder to elevate their building to comply with the floodplain regulations. *The key is that this insurance will be provided only if the local official requires, in writing, that the building be elevated.* Thus, the local official has a most important role in obtaining resources needed by the victim to reconstruct the building out of harms way. Once this requirement is made, the victim has the option of either elevating the structure, relocating it to another site out of the floodplain, or demolishing it and setting up a new site, all scenarios of which can be funded through ICC coverage. Another option available for nonresidential buildings is to structurally floodproof them to an elevation above the 100-year flood level.

Flood insurance now offers flood victims opportunities that were never possible before, as long as damage exceeds 50 percent of pre-flood market value and the local official enforces his/her ordinance by requiring elevation to or above the BFE. However, ICC coverage is only available to those who have flood insurance. What about those who do not carry insurance? The same action by a local official that triggers ICC coverage also applies to the other major disaster relief program, the Small Business Administration, or SBA, loan. If a local official requires that a substantially damaged structure be elevated per the local ordinance and the victim does not have flood insurance, this action would make the victim eligible for additional mitigation benefits added to the SBA loan to elevate the building. Note that this program is only available in a Presidentially-declared disaster (or a smaller, SBA-declared disaster), while the flood insurance ICC benefit is available at all times, regardless of whether or not a disaster has been declared. What is common in both these scenarios is that *local officials hold the key to enabling flood victims to take advantage of opportunities that occur only in the post-disaster setting.*

Assistance Available. FEMA can assist local officials in making their substantial damage determinations. The agency has published a “Guide for Estimating Substantial Damage Using the NFIP Residential Substantial Damage Estimator,” or FEMA-31. This document comes with software and a manual, and is available through FEMA Publications or the Regional Office. Also, FEMA adjustors routinely provide forms they use to identify potential substantial damage cases. These forms, in turn, are provided to community officials. They are a screening tool, and can be augmented with locally-generated data on the cost to repair and on market values.